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STATE FOR WHA/CAR

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TAGS: [BF](#) [PGOV](#)  
SUBJECT: GCOB VOWS TO SIGN NEW COPYRIGHT LAW REPEALING  
COMPULSORY LICENCE

REF: A. NASSAU 280  
[1](#)B. STATE 415671

Classified By: DCM ELMO for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary. Ministry of Foreign Affairs Director General, Ambassador Joshua Sears, told PolCounselor and USTR officials privately on August 5th that the Governor General will sign an amendment to the Copyright Act of 2000 in the next few weeks, which would narrow the scope of the compulsory license to permit only compulsory licensing of copyrighted works broadcast free over the air. The amendment was initially passed by Parliament in 2004 but never signed into law. The existing copyright law allows Cable Bahamas to intercept and distribute encrypted U.S. cable television satellite signals. The message from the Government of The Bahamas (GCOB) was delivered on the margins of an Intellectual Property Rights (IPR) meeting between U.S. broadcast industry members, Cable Bahamas and representatives from both governments. If the compulsory license is not repealed the GCOB risks losing this year,s Caribbean Basin Initiative (CBI) benefits and being placed on the USTR Special 301 Watch List next year. End Summary.

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Stakeholders Met to Resolve Impasse  
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[1](#)2. (SBU) On August 5, the Ministry of Foreign Affairs (MFA) hosted a meeting between U.S. industry members, Cable Bahamas and representatives from both governments in an effort to resolve the long-standing dispute between Cable Bahamas and U.S. network providers (REF A). The meeting was the culmination of years of effort on the part of Post to achieve resolution of the issue. Sears began the meeting by reaffirming the close relationship between the GCOB and the U.S. and stated that his government was committed to moving forward and resolving the matter. He informed stakeholders that the GCOB was conducting a comprehensive review of all copyright legislation. Assistant Director of Legal Affairs Shane Miller told participants that the GCOB was not interested in establishing "maverick legislation" with their compulsory license. Miller stated that the GCOB had met its obligations and the issue was now considered a commercial matter.

[1](#)3. (C) Sears has participated in this issue throughout the long and arduous process that began nearly ten years ago. USTR placed The Bahamas on its Special 301 Watchlist for several years based upon concerns over the country,s compulsory licensing regime. Cable Bahamas countered for many years that outdated distribution contracts being used in the U.S. placed The Bahamas in the Latin American distribution zone, providing Spanish-language programming useless to the local population. The Television Association of Programmers (TAPLAT) made significant efforts to address this issue and cable providers now offer over 90 percent of

their programming in English. The Bahamas was removed from the Special 301 Watch List in 2006 and has remained off since then, with the provision that the GCOB put forth good faith efforts to address the compulsory licensing issue in 2009.

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USTR ) CBI Benefits and WTO  
Application at Risk  
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¶4. (SBU) The USG emphasized that IPR protection was the cornerstone of economic development. USTR official Kent Shigetomi told the participants that essentially nothing had changed since 2000. Although the copyright amendments had passed both houses of Parliament, they had not been signed by the Governor General and entered into force. Shigetomi told the GCOB that the benefits they receive under the CBI were at risk if the compulsory license was not repealed. He also noted that The Bahamas copyright protection laws were under scrutiny as part of both the Special 301 process and The Bahamas World Trade Organization (WTO) application.

¶5. (SBU) U.S. Industry representatives reiterated their position that the GCOB was the only nation in the world with such a license and that it established a dangerous precedent in the region. Industry representatives noted that other countries in the region had tried to enact similar licenses but failed to do so in part because of the impact on other international arrangements such as accession to the WTO. They affirmed that a commercial solution could not be reached as long as compulsory license was in place because it removed the incentive for the cable company to negotiate in good faith and that maintaining the status quo was unacceptable.

The industry representatives said that the arguments put forth in defense of the license in 2000 by Cable Bahamas no longer applied as 90 percent of programming is now available in English. In addition, it was noted that commercial solutions are widely available and are being reached without compulsory licenses. HBO noted that they operate in 33 countries without the use of a compulsory license.

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Cable Bahamas: If we don,t steal  
it, someone else will  
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¶6. (SBU) Cable Bahamas stated that their main goal was to obtain affiliation agreements in order to be able to provide desired programming to Bahamians. Cable Bahamas pointed to their affiliation agreements with MTV, Fox and Discovery and said other providers have refused to negotiate with them (industry reps noted that those providers can clear rights because they own their own material, others do not). Cable Bahamas requested a time table for affiliation agreements and greater clearance of U.S programming. They claimed that a compulsory license would only be used where a signal was unavailable and when programmers have been unable to clear rights. Legal Counsel for Cable Bahamas Mark Palchick said that although he recognized that copyright owners had very legitimate concerns, "absent the compulsory license there is no legal way for Cable Bahamas to provide programming or for copyright owners to receive compensation." He noted that the compulsory license was "100 percent compliant with international law." He asked industry representatives to reconsider their refusal to participate in the copyright royalty fund. He said the fund was not an acknowledgement that the compulsory license was appropriate but a way for copyright owners to receive compensation.

¶7. (SBU) Cable Bahamas maintained that since U.S. satellite coverage extended to the whole of the Bahamas they were not able to compete with illegal receivers. Cable Bahamas noted the ease that Bahamians could procure DirecTV and Dish Network accounts by citing a U.S. address and relocating the dish and receiver to the Bahamas. They argued that Cable Bahamas would need to offer the same package of programming as was available in Florida to be competitive or risk a loss

of business to U.S. Direct TV and Dish Network. U.S. suppliers countered that they would be willing to work with the GCOB and Cable Bahamas to shut down the illegal boxes.

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GCOB ) We Understand our Obligations  
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¶18. (SBU) The GCOB noted that they had no control over the operation of Cable Bahamas and expressed a "clear commitment to abide by international law." In this regard, Simon Wilson, Director of Economic Planning said, "we understand our obligations." Ambassador Sears told participants that he would "faithfully report the views expressed" to higher officials responsible for making decisions on the matters discussed and that everyone in the room "was on the same page." The USG reiterated the urgency of the issue and that the deadline for the USTR report was looming. USG representatives noted that USTR was required to submit a report on the operation of the Caribbean Basin Economic Recovery Act (CBERA) no later than December 31 of this year. This review could affect The Bahamas, continued eligibility to receive unilateral trade preferences under the Caribbean Basin Initiative (CBI). In order to be considered in the report, the Copyright Amendment should ideally be signed and entered into force prior to October 31.

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GCOB DG ) Amendment WILL be signed shortly  
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¶19. (C) In a sidebar meeting between government officials, Sears affirmed that the law would be signed and that the Cabinet was "resolute" on the issue. USG representatives raised concerns that the effective date occur simultaneously or soon after the law is signed. Sears affirmed that there would be no delay. Senior U.S. Congressional staffer Shanna Winters offered assistance in facilitating parties to take part in commercial negotiations once the law is in effect.

¶10. (SBU) The GCOB requested assistance in addressing other IPR issues that are limiting Bahamian access to legal U.S. products and services via the Internet. For example, Bahamians can not download songs from iTunes or watch TV episodes on US network websites. Downloading/viewing is

restricted to the 50 U.S. states.

¶11. (SBU) Meeting attendees included: U.S. Participants: Jeff Dubel, U.S. Embassy; Wendy Rejan, U.S. Embassy; Kent Shigetomi, U.S. Trade Representative; Shanna Winters, Senior Staff Member, Congressional Foreign Affairs Committee; CGOB Participants: Ambassador Joshua Sears, Director General, MFA; Rhoda Jackson, Minister Counsel/Deputy Chief of Mission; Alexious Rolle, Multilateral Economics, MFA; Missouri Sherman-Peter, Ministry of National Security; Peter Deveau Issacs, Under Secretary; Monique Morley, Officer Manager; Lt. Moxey, Royal Bahamas Police Force (RBPf); Lisa Pratt, Sergeant, RBPf; Simon Wilson, Director of Economic Planning, Ministry of Finance; Tia Hanna, Economist, Bahamas Customs; Brian Wallace, Customs Officer Grade I, Bahamas Customs; Kirk Seymour, Chairman, Copyright Royalty Tribunal; James Gomez, Member, Copyright Royalty Tribunal; Leroy Somner, Deputy Permanent Secretary, Attorney General Office; Shane Miller, Assistant Director of Legal Affairs, Attorney General Office; Rose Green Thompson, Law Student, Attorney General Office; Jucinda Butler, Director, Registrar General's Office; Gayle Davis, Office Manager, Registrar General's Office; Cable Bahamas Participants: Anthony Butler, CEO, Cable Bahamas; Mark Palchick, Legal Counsel, Cable Bahamas; U.S. Industry Participants: Sean Spencer, President, Television Association of Programmers; Jose Sariego, Chief Legal Counsel, HBO Latin America; Ken Pierce, Legal Counsel, HBO Domestic; Bernard Stewart, International Trade Specialist, ESPN Caribbean; and Cameron Gilreath, Senior Vice President, Time Warner.

¶12. (C) COMMENT. The GCOB commitment to enact the 2004 Copyright Amendment appears to have been motivated by U.S.

congressional intervention, a legitimate fear of being put back onto the 301 Watch List, concerns about WTO accession, and losing CBI benefits. Enacting will force Cable Bahamas to enter into negotiations with U.S. industry representatives and hopefully put an end to this long-standing dispute.

¶13. (SBU) This cable has been cleared by StaffDel Shanna Winters and USTR Kent Shigetomi.  
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